

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Michael Nevares**, in his individual  
and representative capacity as trustee  
of the Nevares Michael E.  
Revocable Living Trust (08-16-04);  
**Michael A. Moore;**  
**Chen Ying;**  
**Zhang Ying;** and Does 1-10,

Defendants.

**Case No. '14CV2372 WQHWVG**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants Michael Nevares, in his individual and representative capacity as trustee of the Nevares Michael E. Revocable Living Trust (08-16-04); Michael A. Moore; Chen Ying; Zhang Ying; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has

1 a specially equipped van with a ramp that deploys out of the passenger side  
2 of his van and he has a Disabled Person Parking Placard issued to him by the  
3 State of California.

4 2. Defendants are, or were at the time of the incidents, the real property  
5 owners, business operators, lessors and/or lessees for the All Shores apparel  
6 store ("Store") located at or about 2611 Congress Street, San Diego,  
7 California.

8 3. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained  
11 of, and alleges a joint venture and common enterprise by all such  
12 Defendants. Plaintiff is informed and believes that each of the Defendants  
13 herein, including Does 1 through 10, inclusive, is responsible in some  
14 capacity for the events herein alleged, or is a necessary party for obtaining  
15 appropriate relief. Plaintiff will seek leave to amend when the true names,  
16 capacities, connections, and responsibilities of the Defendants and Does 1  
17 through 10, inclusive, are ascertained.

18  
19 **JURISDICTION & VENUE:**

20 4. This Court has subject matter jurisdiction over this action pursuant to  
21 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
22 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 5. Pursuant to pendant jurisdiction, an attendant and related cause of  
24 action, arising from the same nucleus of operative facts and arising out of  
25 the same transactions, is also brought under California's Unruh Civil Rights  
26 Act, and the California Disabled Persons Act, which acts expressly  
27 incorporate the Americans with Disabilities Act.

28 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action  
2 is located in this district and that Plaintiff's cause of action arose in this  
3 district.

4  
5 **FACTUAL ALLEGATIONS:**

6 7. The Plaintiff went to the Store in July of 2014 to buy a vintage shirt.

7 8. The Store is a facility open to the public, a place of public  
8 accommodation, and a business establishment.

9 9. Unfortunately, although there is an entrance to get inside the Store,  
10 there is no accessible path of travel for wheelchair users because of steps  
11 that are located in front of the Store entrance.

12 10. The plaintiff personally encountered this problem. This inaccessible  
13 condition denied the plaintiff full and equal access and caused him difficulty  
14 and frustration.

15 11. Plaintiff would like to return and patronize the Store but will be  
16 deterred from visiting until the defendants cure the violation. Plaintiff lives  
17 in San Diego County and visits the Old Town area on a regular basis.

18 12. The defendants have failed to maintain in working and useable  
19 condition those features required to provide ready access to persons with  
20 disabilities.

21 13. Given the obvious and blatant violations, the plaintiff alleges, on  
22 information and belief, that there are other violations and barriers on the site  
23 that relate to his disability. Plaintiff will amend the complaint, to provide  
24 proper notice regarding the scope of this lawsuit, once he conducts a site  
25 inspection. However, please be on notice that the plaintiff seeks to have all  
26 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
27 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
28 he can sue to have all barriers that relate to his disability removed regardless

1 of whether he personally encountered them).

2 14. Additionally, on information and belief, the plaintiff alleges that the  
3 failure to remove these barriers was intentional because: (1) these particular  
4 barriers are intuitive and obvious; (2) the defendants exercised control and  
5 dominion over the conditions at this location and, therefore, the lack of  
6 accessible facilities was not an “accident” because had the defendants  
7 intended any other configuration, they had the means and ability to make the  
8 change.

9  
10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
11 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
12 all defendants (42 U.S.C. section 12101, et seq.)

13 15. Plaintiff repleads and incorporates by reference, as if fully set forth  
14 again herein, the allegations contained in all prior paragraphs of this  
15 complaint.

16 16. Under the ADA, it is an act of discrimination to fail to ensure that the  
17 privileges, advantages, accommodations, facilities, goods and services of  
18 any place of public accommodation is offered on a full and equal basis by  
19 anyone who owns, leases, or operates a place of public accommodation. See  
20 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,  
22 or procedures, when such modifications are necessary to afford  
23 goods, services, facilities, privileges, advantages, or  
24 accommodations to individuals with disabilities, unless the  
25 accommodation would work a fundamental alteration of those  
26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is  
28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."

c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

17. There must be an accessible path of travel that connects all buildings, elements and spaces on the same site. 1991 Standards § 4.3.2. To be considered an accessible route, there cannot be a stair or step. 1991 Standards § 4.3.8. Any such change in level measuring greater than ½ inch must have a ramp or lift. *Id.* 2010 Standards § 303.4.

18. Here, the unramped steps are a violation of the ADA.

19. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

20. Here, the failure to ensure that the accessible path of travel was available and ready to be used by the plaintiff is a violation of the law.

## **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ § 51-53)

21. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 22. Because the defendants violated the plaintiffs' rights under the ADA,  
3 they also violated the Unruh Civil Rights Act and are liable for damages.  
4 (Civ. Code § 51(f), 52(a).)

5 23. Because the violation of the Unruh Civil Rights Act resulted in  
6 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
7 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
8 55.56(a)-(c).)

9  
10 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
11 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
12 against all defendants) (Cal Civ. § 54-54.8)

13 24. Plaintiff repleads and incorporates by reference, as if fully set forth  
14 again herein, the allegations contained in all prior paragraphs of this  
15 complaint.

16 25. Because the defendants violated the plaintiff's rights under the ADA,  
17 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
18 Code § 54.1(d), 54.3(a).)

19 26. Because the violation of the Disabled Persons Act resulted in  
20 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
21 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
22 55.56(a)-(c).)

23  
24 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
25 plaintiff and against all defendants)

26 27. Plaintiff repleads and incorporates by reference, as if fully set forth  
27 again herein, the allegations contained in all prior paragraphs of this  
28 complaint.

1       28. The Defendants had a general duty and a duty arising under the  
2 Americans with Disabilities Act and the Unruh Civil Rights Act and  
3 California Disabled Persons Act to provide safe, convenient, and accessible  
4 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
5 preceding paragraphs, has caused injury and damage as alleged above.

6  
7       **PRAYER:**

8       Wherefore, Plaintiff prays that this court award damages and provide  
9 relief as follows:

10       1. For injunctive relief, compelling defendants to comply with the  
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
12 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
13 seeking injunctive relief under the Disabled Persons Act at all.

14       2. Damages under the Unruh Civil Rights Act and/or the California  
15 Disabled Persons Act which damages provide for actual damages and a  
16 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
17 acts, simultaneously, and an election will be made prior to or at trial.

18       3. Reasonable attorney fees, litigation expenses and costs of suit,  
19 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

20  
21       Dated: August 25, 2014

CENTER FOR DISABILITY ACCESS

22  
23       By: 

24       \_\_\_\_\_  
Mark Potter, Esq.  
Attorneys for Plaintiff